LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 1 1971
E. ROBERT SEAVER, CLERK

No. 71-400

In the Supreme Court of the United States

OCTOBER TERM, 1971

WILLIE CLYDE HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530

INDEX

	Page
Memorandum	1
Appendix A	11
Appendix B	13
Appendix C	14
Appendix D	15

CITATIONS

Cases:

Edwards v. *United States*, 395 F. 2d 453	10
Gonzales v. *United States*, 348 U.S. 407	5, 6, 7
Knox v. *United States*, 200 F. 2d 398	10
Mulloy v. *United States*, 398 U.S. 410	9
United States v. *Chaudron*, 425 F. 2d 605	10
United States ex rel. McCarthy v. *Cook*, 225 F. 2d 71, certiorari denied, 350 U.S. 937	8
Witmer v. *United States*, 348 U.S. 375	6

Statutes and regulations:

Military Selective Service Act of 1967, 50 U.S.C. App. (Supp. IV) 456(j)	6
50 U.S.C. App. (Supp. III) 456(j)	3
50 U.S.C. App. 462(a)	1
Selective Service Regulations:	
32 C.F.R. (1967 ed.) 1926.12	7
32 C.F.R. (1967 ed.) 1626.24(b)	7
32 C.F.R. (1967 ed.) 1626.25	6
32 C.F.R. 1660.20(c)	4, 8

448-200—71

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-400

WILLIE CLYDE HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of willfully failing to report for civilian work in lieu of induction, in violation of 50 U.S.C. App. 462(a). He was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. 1-7).

The essential facts are not in dispute. Petitioner registered with his local board on September 23, 1964, and indicated that he was a conscientious objector. He was mailed the Special Form for Conscientious Objectors (SSS Form 150), which he completed and returned to the board on October 28, 1964. In the

form, petitioner stated that he was a duly ordained minister of Jehovah's Witnesses. On January 1, 1965, he was placed in Class I-A-O.

On being notified of this classification, petitioner wrote to his local board on January 30, 1965, asking that he be afforded a personal appearance "because I am a Jehovah's Witness, and I would like to have my classification changed to that of a Minister, which is classification IV–D" (see Appendix A, *infra*, p. 11). He was mailed a Special Illinois State Form for those claiming ministerial status, which he completed and returned to the board on February 23, 1965. In the form, he stated that he had been ordained a minister of the Jehovah's Witnesses at the age of 17; that the Chicago Woodlawn Unit, with which he was associated, had 140 members, all ordained ministers; that he was an assistant Bible Study Conductor and spent approximately five hours a week preaching and teaching the principles of his religion; and that he spent approximately 34 hours a week engaged in secular activities not related to his ministerial duties. The board also received a letter from the Congregation Servant of the Chicago Woodlawn Unit (Appendix B, *infra*, p. 13). It stated that "[l]ike all of Jehovah's Witnesses, [petitioner's] ministerial activities has [*sic*] mainly been from door-to-door," but added: "There can be no question as to his * * * determination to preach and live a Christian life. His motive is genuine and sincere. He plans to be a *full time* Minister, a Pioneer for life" (emphasis in original).

On March 16, 1965, the local board reopened petitioner's classification and granted him a personal appearance. After talking with petitioner, the board concluded that the information he had submitted did not entitle him to a ministerial exemption; it voted to retain him in Class I-A-O.

Petitioner then took an appeal to the State Appeal Board, and, on August 3, 1965, pursuant to the procedures then in effect (50 U.S.C. App. (Supp. III) 456 (j)), the conscientious objector claim was referred to the Department of Justice for its review and recommendation. More than two years elapsed before the Department acted; on February 15, 1968, it recommended that petitioner be placed in Class I–O as a conscientious objector.

Petitioner's local board mailed to his original address a copy of the Department recommendation on February 19, 1968, notifying him at the same time that he had 30 days to reply to the recommendation.[1] This communication was not returned to the local board and no response was received from petitioner within the 30-day period. On April 18, 1968, the State Appeal Board classified petitioner I–O, and notice of this classification was mailed to his original address.

The local board then began to process petitioner for a civilian work assignment in lieu of induction. On

[1] On November 21, 1967, the local board had been notified by petitioner of an address change. It is agreed that the board's failure to mail the Department's recommendation to this new address was the result of an inadvertent oversight by the clerk of the board (Pet. 3).

April 29, 1968, it mailed him a current information questionnaire, also directed to his original address. This letter was returned unopened, with the notation on the envelope "not here, try 8657 Halsted." Letters were then mailed to persons whom petitioner had indicated would know his current address; the responses stated that petitioner was residing at 8739 So. Halstead Street, Chicago, Illinois. A current information questionnaire was then mailed to that address on May 31, 1968; it indicated that petitioner was classified I–O; petitioner completed and returned this form on June 12, 1968.

Petitioner was ordered to report for his Armed Forces physical examination on June 24, 1968. He complied with that order and was found physically acceptable. Thereafter, on August 1, 1968, he was mailed SSS Form No. 152 (Special Report for Class I–O Registrants), asking that he list three preferences of approved civilian work. He returned this form without listing any type of work, and attached a handwritten note stating "I deeply appreciate the provision you have extended to me. But because I am a dedicated baptized Christian I can not accept" (see Appendix C, *infra*, p. 14).

An invitation was then extended to petitioner, pursuant to 32 C.F.R. 1660.20(c), to meet with a representative of the State Director and members of the board on November 19, 1968, to discuss possible types of civilian work. The meeting took place on that date; the minutes (see Appendix D, *infra*, pp. 15–16) reflect that "[t]he purpose of the meeting was explained to

the registrant," that he then refused to look at the approved list of possible civilian work on the ground that such work "would be a compromise" of his position as a Jehovah's Witnesses' minister, and that he "would not compromise with the government." No agreement was reached.

The local board then determined that petitioner should be assigned to institutional work at the Elgin State Hospital. This was subsequently approved by the State Director, and, on January 22, 1969, he was ordered to report to the local board on February 3, 1969, for his assignment of employment. Petitioner failed to comply with this order. On February 5, 1969, he notified the board that he would not comply and again requested a ministerial classification. He was told to report to Elgin State Hospital on February 10, 1969, but he refused to do so. The present indictment and conviction followed, and the court of appeals affirmed (Pet. App. 1–7).

1. Petitioner contends here that because the board mistakenly mailed the Department of Justice recommendation, favoring a I–O classification, to the wrong address, he was deprived of an opportunity to respond thereto, and thus his exemption claims were unfairly considered by the State Appeal Board. Under this Court's decision in *Gonzales* v. *United States*, 348 U.S. 407, it is, of course, now well settled that a copy of the Department recommendation is generally to be furnished to the registrant and he is to be afforded an opportunity to submit a written reply to it. While that procedure was not followed in this case due to an over-

sight by the clerk of the board of petitioner's change in address, we think that the court below properly concluded that no prejudice resulted from the failure to provide petitioner with a copy of the recommendation in the circumstances of this case; there is thus no cause for further review by this Court.

Here, unlike *Gonzales* and the other cases on which petitioner relies (Pet. 6–8), the Department's recommendation was favorable to petitioner. It stated that he was entitled to conscientious objector status, and the State Appeal Board classified him I–O. This was the exemption that petitioner had originally sought from his local board.

Petitioner argues, however, that, because he did not receive a copy of the recommendation, he was deprived of an opportunity to provide new information to the State Appeal Board in support of his separate ministerial claim. But, as pointed out by the court below (Pet. App. 3), the Department did "not purport to pass on that [claim]." Indeed, it could not do so; for, by the terms of the statute then in effect,[2] it was strictly limited to reviewing only conscientious objector claims. See 50 U.S.C. App. 456(j); 32 C.F.R. (1967 ed.) 1626.25; cf. *Witmer* v. *United States,* 348 U.S. 375. And, while *Gonzales* and its progeny recog-

[2] The procedure for securing an advisory recommendation of the Department was eliminated by the Military Selective Service Act of 1967, 50 U.S.C. App. (Supp. IV) 456(j), essentially because—as this case demonstrates—it generally took an extremely long time for the Department to complete its investigation.

nize the registrant's right to reply in writing to the position that the Department takes with respect to the requested I–O classification, those decisions clearly do not establish a procedure that permits the registrant to use such a response solely "to buttress" an *unrelated* claim "with supporting information before the Appeal Board [makes] its final decision" (Pet. 7).

Consideration by the State Appeal Board of all claims other than the one premised on conscientious objection was, at the time of petitioner's administrative appeal, specifically confined by regulation to the "* * * information * * * contained in the record received from the local board * * *" (32 C.F.R. (1967 ed.) 1626.24(b)). Thus, whatever information petitioner wanted "to add" (Pet. 6) to bolster his ministerial claim could not properly have been considered on this administrative appeal.

Petitioner could, of course, have attached "to his appeal a statement specifying the matters in which he [believed] the local board erred, * * * [directing] attention to any information in [his] file which he [believed] the local board * * * failed to consider or to give sufficient weight, and * * * [setting] out in full any information which was offered to the local board and which the local board failed or refused to include in [his] file." See 32 C.F.R. (1967 ed.) 1626.12; *Gonzales* v. *United States, supra,* 348 U.S. at 414–415. This he did not do. His claim of prejudice on the ground that, at some later date, he was deprived of an opportunity to furnish "more information in support

448-200—71——2

of his [ministerial] claim" (Pet. 6) is therefore not well taken.

2. Nor do we think that petitioner suffered any prejudice because the notice of his I–O classification was mailed to the wrong address. See *United States ex rel. McCarthy* v. *Cook*, 225 F. 2d 71 (C.A. 3), certiorari denied, 350 U.S. 937. His assertion that he was thereby "led * * * to believe that he was being ordered to report for civilian service while still classified I–A–O and with an appeal pending" (Pet. 9–10) is belied by the record.

After the board learned of petitioner's new address, it mailed to him a Current Information Questionnaire (SSS Form 127) on May 31, 1968, which noted that he was in Class I–O. This was received by petitioner, completed and returned to the board on June 12, 1968. A similar form was mailed to him on July 9, 1968, also indicating that he had been classified I–O, and it was completed by petitioner and returned to the board on July 17, 1968. In addition, petitioner received the "Special Report for Class I–O Registrants" (SSS Form No. 152), instructing him to select three types of approved civilian work. He returned this form without completing it, attaching a letter stating that he could accept no civilian work because to do so "would be comprimising [sic] my belief" (see Appendix C *infra*, p. 14). He was then afforded an opportunity to meet with the board to discuss a possible civilian work assignment, pursuant to 32 C.F.R. 1660.20(c), and, on that occasion, "the purpose of the

meeting was explained to [him]" (see Appendix D *infra*, p. 15). It is, therefore, inconceivable that petitioner, a high school graduate, remained unaware that he had been reclassified 1-O by the Appeal Board "until the day of trial" (Pet. 11).

Moreover, the events recited above all occurred well before petitioner was mailed an order to report for civilian work on January 22, 1969. Thus, to the extent that he had additional evidence supporting his ministerial claim, he had ample opportunity to present it to the board;[2] if a *prima facie* case had been made, the board would have been obliged to reopen his classification. See *Mulloy* v. *United States*, 398 U.S. 410. No new information was submitted, however; even now, petitioner asserts only that as he "matured he would begin to assume a more active adult role in his congregation of Jehovah's Witnesses. Consequently, his ministerial teaching, preaching and proselytic activities would become more similar to that which the Local Board would characterize as a vocation" (Pet. 11).

3. In sum, petitioner claims that he never received certain communications from the local board due to an inadvertant mistake in addressing the envelopes. While such clerical errors are not to be condoned, they inevitably occur. Where, as here, it is clear that

[2] As pointed out by the court below (Pet. App. 5), on the basis of the information petitioner did submit to the local board, there was clearly a basis in fact for the denial of his ministerial claim. See p. 2 *supra*.

the error did not result in any material prejudice to the registrant, we think that it is inappropriate to disturb the decision below. See *Knox* v. *United States*, 200 F. 2d 398, 401 (C.A. 9); *United States* v. *Chaudron*, 425 F. 2d 605 (C.A. 8); *Edwards* v. *United States*, 395 F. 2d 453 (C.A. 9). Essentially, petitioner's claim of prejudice comes down to this: that he was—because of certain assumptions he says he made—deprived of an opportunity to submit additional evidence to the local and appeal boards supporting a ministerial claim. The procedural irregularities involved here, however, did not erect any barrier to such a submission. As indicated above, petitioner had ample opportunity after he had been located by the board to tender any new information he might have had. His failure to do so should not now be excused because hindsight reveals a clerical error from which no real prejudice resulted.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

---

[4] Petitioner's argument before this Court was not made in his motion for acquittal before the district court or in his principal brief before the court of appeals. His claim of prejudice on the basis of the erroneous mailings was first advanced in his reply brief in the court of appeals (Pet. App. 2).

APPENDIX A

CHICAGO, ILL., *January 30, 1965.*

TO WHOM IT MAY CONCERN: My name is Willie C. Harris, my selective service number is 11–48–46–127. I am registered under Local Board No. 48.

According to the notice of classification, I was classified as a I–A–O. It was stated also in the classification notice that I have the choice to a personal appeal. I wish to exercise this choice. I wish to do so, because I am a JEHOVAH'S WITNESS, and I would like to have my classification changed to that of a Minister, which is classification IV–D.

I was to have brought a letter from my Congregation Servant, to state this fact, but due to my own negligence I did not. I wish to ask your forgiveness for this oversight of mine.

According to Section 5D Selective Training and Service Act of 1940; "Regular or duly ordained ministers of religions shall be exempted from training and service (but not from registration) under this act.

I would like to be placed in class IV–D in accordance with Volume III, opinion no 14, National Headquarters, Selective Service System, November 2, 1942; which stated that JEHOVAH'S WITNESSES, may be placed in this class. As a JEHOVAH'S WITNESS, I have a commission and that is to preach the "Good News of God's Kingdom" to all person's of the World. (Matt. 24:14). This is not a commission I thought of myself or that I got from some friend of mine, but on the contrary, It is commission from GOD and this was stated at Isaiah 61:1,2. It explains

why GOD, has followers on earth today and what these followers must do. I recognize the WATCH-TOWER BIBLE and TRACT SOCIETY of Brooklyn, New York as the governing body of JEHOVAH'S WITNESSES, because they supply JEHOVAH'S WITNESSES, with all Bible Literature.

Many persons of today think that because JEHOVAH'S WITNESSES, don't go to College or School for ministry that the Witnesses are not Ministers. We take into account JESUS, himself. He didn't go to school to be a minister because he had a commission from GOD to preach the "Good News". And today JESUS, has followers on earth and these followers have the same commission as JESUS. The scriptures at John 7:15,16 and 1 Cor. 1:26–29; brings out that his followers do not need a school certificate to preach the "Everlasting Good News of GOD'S Kingdom."

So in humble thanks to you for all the trouble I have caused you.

I remain your Obedient Servant,

WILLIE C. HARRIS.

APPENDIX B

WOODLAWN CONGREGATION,
Chicago 37, Ill., January 22, 1965.

TO WHOM IT MAY CONCERN: This is to acknowledge that Willie Harris, is an associate of the Chicago Woodlawn Unit of Jehovah's Witnesses, which unit is operating under the direction of the Corporate and Parent Organization, The Watchtower Bible and Tract Society, Inc. of Brooklyn, New York.

Willie Harris, has been an associate with the Local Unit for two (2) years. He was baptized as an ordained Minister, November 11/63. Since that time, he has served zealously as a Minister and Preacher of "this good news of the Kingdom." Like all of Jehovah's Witnesses, his ministerial activities has mainly been from door-to-door.

Willie Harris, enjoys the good will and esteem of all of associate publishers. As the Overseer or Congregation Servant, I have observed Willie Harris, as genuine and sincere. Willie Harris's family background is Christian. His mother and sister are also dedicated and baptized as Jehovah's Witnesses.

There can be no question as to his (Willie Harris) determination to preach and live a Christian life. His motive is genuine and sincere. He plans to be a *full time* Minister, a Pioneer for life.

Sincerely yours,

MACEO A. BYRD.

APPENDIX C

CHICAGO, ILL., *August 22, 1968.*

DEAR SIR: I deeply appreciate the provision you have extended to me. But because I am a dedicated baptized Christian I can not accept because of what the Bible teaches and my own personal opinion that this would be comprimising my belief and I can not do this. In the early days the first century Christian did not comprimise and I myself can do no less. I thank you for all services rendered and I'm sorry that this letter is late.

WILLIE C. HARRIS.

APPENDIX D

LOCAL BOARD No. 48,
SELECTIVE SERVICE SYSTEM,
Chicago, Ill., November 19, 1968.

Re: 11-48-46-127—Harris, Willie Clyde

Pursuant to 1660.20(c) of Current Selective Service Regulations, a meeting was held in the office of this Local Board located at 2355 W. 63rd Street, Chicago, Illinois. Present were: Mrs. Hertha Maas, Division Supervisor, the direct representative of the Illinois State Director, Selective Service System; Mr. Curtis Stillwell, Chairman; Rev. C. V. Johnson, Mr. Frank Baxter Sr. and Mr. Richard L. Denzy, members.

The purpose of the meeting was explained to the registrant who was sworn in by Mr. Stillwell, Board Chairman. The registrant was asked if he cared to look at the list of approved agencies whereat he might perform civilian work in lieu of induction. He said, "No" that this would be a compromise because he feels that he is a minister. He was asked if he cared to perform civilian work in lieu of induction. He does not. He said that this would compromise his belief as a christian and he would not compromise with the government.

In view of the fact that the registrant came to no agreement with the board as to the type of civilian work he should perform in lieu of induction. The members unanimously decided that institutional work at Elgin State Hospital, 750 South State Street, Elgin, Illinois would be an appropriate type of work for him to perform in lieu of induction into the Armed

Forces. The members also authorized the issuance of the Civilian Work Order (SSS Form 153) if the type of work is approved by the Director of Selective Service.

The meeting convened at 6:35 P.M. and adjourned at 7:00 P.M.

MRS. RUBY HILL,
Executive Secretary.

U.S. GOVERNMENT PRINTING OFFICE: 1971